Basin Plan Triennial Review Workshop
Summary of Public Comments/Questions
San Francisco Bay Regional Water Quality Control Board
Oakland, CA
June 8, 2004

I. Background

San Francisco Bay Regional Water Quality Control Board (Water Board) staff is conducting its Triennial Review of the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The Water Board held a public workshop from 10:00 a.m. to 12:00 p.m. on Tuesday, June 8, 2004, at the Elihu Harris State Office Building. Approximately 25 representatives from public agencies, environmental organizations, and other members of the public attended.

The goals of the meeting were to:

1. Update stakeholders on the Triennial Review Process.
2. Present general topics for consideration in the upcoming Triennial Review.
3. Solicit comments from the regulated community and members of the public on the potential scope of planning efforts for the next three years.

Steve Moore, Section Leader of Planning for the Water Board opened the workshop by reviewing the agenda and explaining how this workshop fit into the overall Triennial Review development process and schedule. He emphasized that, in the next steps in the process, Water Board staff would be looking to stakeholders for their input. He then presented an overview of the Triennial Review process and the three general topics for consideration:

- Evaluate the need for site-specific objectives for toxic pollutants.
- Stream protection and management.
- Updates of regulatory programs.

An issue paper providing detail about these topics is available at http://www.swrcb.ca.gov/rwqcb2/basinplan.htm.

Steve Moore's presentation was followed by a question and answer/comment period. Thomas Mumley, Division Chief, Planning & TMDL Division participated in this question and answer session. The public was also encouraged to submit comments in writing, by electronic mail, or by telephone by June 18, 2004. The questions and answers from the meeting are summarized below. **Please note: this document is not intended to be an actual transcript of the workshop. Rather, it is a summary of the question and answer session.** We tried to capture the speakers' comments as accurately as possible. These comments will be used to inform the next step in the process: an amendment to the Water Quality Control Plan for the San Francisco Bay Basin entitled "Continuing Planning," located at the end of Chapter 4 of the Basin Plan.

II. Next Steps

Water Board staff will prepare a final workplan and draft Basin Plan Amendment. These documents will be circulated for a formal 45-day public comment period. After responses to these comments are prepared, Staff will then bring a proposed amendment to the Board for consideration and adoption in fall 2004.

III. Summary of Questions and Answers

Questions During Presentation:

Kevin Buchan, WSPA—When you were talking about the legislation and counting beneficial uses for the streams, was that linked to the legislation?

Steve Moore response—The proposed legislation is something I don't know a whole lot about. You know how legislation works. What's there one week may be dropped next week.

Kevin Buchan, WSPA—Has that legislation been adopted?

Steve Moore response—No. It's legislation that is currently under consideration that was looking at the Los Angeles Water Board and the Lahontan Water Board, which includesTahoe, who had come up with these beneficial uses. It's something that gets us where we need to go as far as tying our permitting programs to protection of beneficial uses, which is part of water quality standards. The question for a 401 permit is "Will the project be a violation of water quality standards?" And that's a tough question to answer with just your traditional water quality measures. But if we make it more explicit that physical characteristics of water bodies are part of the standard, that makes it clearer what the rationale is.

Kevin Buchan, WSPA —Could you clarify what a 401 project is?

Steve Moore response—Section 401 requires certification that a planned project in waters of the U.S., such as a stream bank stabilization, will not violate water quality standards. The Water Board is responsible for this certification, but it is not always easy to determine whether water quality standards will be violated or not. 401 certification goes hand in hand with 404 certification by the U.S. Army Corps of Engineers. The 401 provides the States with veto power over the federal permit.

Susan Glendening, San Francisco Public Utilities Commission (S.F. PUC)—Would these new beneficial use standards be applied to existing projects or will they start with new projects?

Steve Moore response—We aren't planning to revise the whole list of use designations, but rather will focus on general use designations that look at water bodies and watersheds holistically, rather than specific segments. It's advantageous to everyone for us to be more general in use designations because these are dynamic systems.

Nancy Yoshikawa, U.S. Environmental Protection Agency—Will you be changing the objectives in the Basin Plan or are you talking procedures for not having a limit in a permit or both?

Steve Moore response—This is a procedure for establishing E. Coli or enterococcus limits in place of Total Coliform limits.

Nancy Yoshikawa—So you mean the procedure to not have a limit in the permit for a given amount of time?

Steve Moore response—I'm not clear that that's part of the process.

Nancy Yoshikawa, U.S. Environmental Protection Agency (U.S. EPA)—You could just have a different limit based on water quality objectives, but I think this is something beyond that. The other permits that I've seen, they suspend the limit for a certain amount of time.

Steve Moore response—There's an experimental period. That's part of the procedure.

Nancy Yoshikawa, U.S. EPA —So it's basically to standardize how you do that.

Steve Moore response—That would be part of it. Being clear about the procedure.

Nancy Yoshikawa, U.S. EPA—Why would that have to be in the Basin Plan, rather than a policy?

Steve Moore response—We could do this with a separate policy, but it would have the same administrative burden as a Basin Plan Amendment, so we could call it an "effluent limit policy" and include it in Chapter 5 of the Basin Plan, "Plans and Policies," or we could include it in Chapter 4, "Implementation Programs," and I like that better because then it's part of an existing set of text that describes how effluent limits are calculated.

Tom Hall, EOA, Inc. and City of Sunnyvale —Just to further clarify. There's currently a disconnect in the Basin Plan between Total Coliform in one section and the water quality objectives for E. Coli and enterococcus. What's missing is a section on how to calculate effluent limits based on enterococcus or E. Coli. What's been done so far on a case-by-case basis is to set the effluent limit as equal to the objective, but that doesn't address issues such as dilution.

Nancy Yoshikawa, U.S. EPA —Is this something that might be better to address this on a statewide level?

Steve Moore response—This didn't come up as a statewide issue in the Basin Planning roundtable discussions of priority statewide planning topics. The statewide issue for bacteria is one of the objectives. There's a consensus to work on that.

Phil Bobel, Santa Clara Basin Watershed Management Initiative (SCBWMI) and City of Palo Alto —Nancy, you used the word suspension and I wanted to reassure you that, in practice, limits haven't been suspended. In our case, an alternative limit for entererocci was used during the period of testing.

Steve Moore response—That's an example of something that's part of the NPDES workload, but it's not currently described in the Basin Plan. It seems to me that it ought to be.

Kevin Buchan, WSPA—What about dilution for bioaccumulatives? Is that going to be a part of the discussion here?

Steve Moore response—You can make the comment that it should be part of the discussion. That's a good example of the many issues that can come up.

Question and Answer Session:

Dave Tucker, City of San Jose—How about translators in the Basin Plan.

Steve Moore response—That's certainly an option. Can you explain what's missing?

Dave Tucker, City of San Jose—Currently, the translators are negotiated on a permit-by-permit basis. The Basin Plan should be amended to clarify the process by which metals translators are selected for effluent limits. Consistency would go a long way towards making the process smoother.

Steve Moore response—We'll add this to the list.

Tom Hall, EOA, Inc. and City of Sunnyvale—The Board could consider bundling several effluent limit guideline activities into one Basin plan amendment project: translators, selection of the representative hardness value for freshwater-based metals objectives, selection of background value for the effluent limits calculation, how much data are needed for each element. This way the process would be more generalized for different dischargers in the region and not so site-specific.

Steve Moore response—This is more of an issue in our Region as we have approximately 40 municipal dischargers, as compared to less than 10 in the L. A. Region. It may make more sense for our Region to do this as a planning exercise, than for some other Regions.

Nancy Yoshikawa, USEPA, Region IX—This makes sense to do as part of the Basin Plan because you could generalize it more. I'm interested in more clarity on how to calculate bacteriological and chlorine residual effluent limitations derived from the water quality objectives in the Basin Plan. We're concerned about suspension of effluent limits during period when alternative disinfection and effluent limits are employed (several months). Example: Delta Diablo permit.

Tom Hall, EOA and City of Sunnyvale— What's been happening for the last 10 or 12 years is that we've taken a very very conservative approach where the effluent limit equals the water quality critieria. There's a disconnect, as I said, because we can't comply with both a fecal or an enterococcus water quality objective based limit and a performance-based total coliform limit. One of the issues is how much effort, if any, needs to go into additional studies about the impact on beneficial uses to justify a fecal or enterococcus based limit. One suggestion is that the Water Board consider adding a limited water contact recreation beneficial use. What we have now is a beneficial use of REC 1 [water contact recreation] that assumes full immersion.

Steve Moore response—One example of this is the East Bay creeks, where there are few swimming holes. Sometimes kids will wade in these creeks, but there is not full immersion. We recently had a Basin Planning roundtable meeting where we compiled a list of potential basin planning issues to be addressed at the state level. Each Regional Board, State Board and U.S. EPA had 10 votes for which issues they thought were the highest priorities. Tied for first place were: review and update beneficial use definitions; and biocriteria development and adoption based on macroinvertebrates. One example of where beneficial use definitions need updating is that we have the Commercial and sport fishing (COMM) beneficial use and the Recreational (REC1) beneficial use and there is overlap between these two. All of our beneficial uses fit into four broad categories: water supply (drinking water,, industrial, and agricultural); consumption of fish and shellfish; recreation in and on the water; and protection of aquatic life. The aquatic life beneficial use could be refined based on bioassessment. The 3rd top vote getter was bacteria objectives for REC1. Tied for 4th were regulations for septic tanks and clarifications of the definition of wetlands for 401 certifications.

Dave Tucker, City of San Jose —What is the status of removing footnote b from the California Toxics Rule (CTR)?

Nancy Yoshikawa, U.S. Environmental Protection Agency—This has been held up because its been bundled with the mercury and cadmium issues, and as you know mercury is controversial right now. It could potentially be unbundled and we could address cadmium and footnote b separately. If interested, agencies can contact Diane Fleck to discuss options of decoupling the project to move it along faster.

Dave Tucker, City of San Jose—Has the report that was put together with U.S. EPA and U.S. Fish and Wildlife been sent out for internal review yet?

Nancy Yoshikawa, U.S. EPA—I believe so. I'll have to check.

Steve Moore response—The recent Basin Plan amendment, when fully approved later this year, implements the same CTR numbers. So for the near term, dischargers' interests are met, but in the long term, in the event EPA were to propose new CTR changes, the process would only then become inefficient again without a footnote b action. So for the near term, there should be no reason to speed up the footnote b process ahead of the other CTR amendments.

Dave Tucker, City of San Jose —You've got a long list of projects. What percentage do you see yourselves actually accomplishing in the next three years given your limited resources. Just as a guestimate, would you say 50%?

Steve Moore response—Well in the last three years, we accomplished roughly 50 % of our projects for various reasons including staff attrition, so we will attempt to improve on that mark.

Dave Tucker, City of San Jose —I recommend that the Water Board consider prioritizing projects that are relatively "easily fixable" due to severe resource limitations over the next couple of years, rather than biting off more than you can chew.

Steve Moore response—That's true, and we can illuminate that through our staff report. We'll make our best guess at the resource needs to accomplish our tasks. We may have to focus on the easily fixable things, but we'd like input on what bigger projects people would like us to work on as well.

Tom Hall, EOA, Inc. and City of Sunnyvale—I suggest that Water Board staff identify opportunities for collaboration in instances where staff resources may be inadequate to take on certain projects.

Phil Bobel, SCBWMI and City of Palo Alto—The WMI wanted to write a letter to support the stream protection policy, since it was identified as one of our very highest priorities in a recent priority setting exercise, which referred to the issue as "Integrated flood, stewardship, and habitat assessment planning and implementation." But the WMI members were unable to come to consensus on a letter of support to the Water Board, and so separate members will provide input. We thought it might be constructive for the Water Board to know about this difficulty reaching consensus. Many landmines were identified, including: property rights and local government flexibility on implementing the stream protection elements; and what to do about existing developments that may not be in compliance. That's our mixed message—extremely high priority, many landmines. We stand ready to work with you, but it is a telltale sign that we're having trouble with a comment letter. If we can get some of these issues behind us that our taking up resources, than it will also help stream protection because it will free up resources. An example is the cyanide issue.

Tom Mumley response—Clearly, stream protection has been a priority of ours for the past three or four years. If it were easy, it would be done by now. Coming up with the concepts is the easy part, but the implementation is the issue, partly because of fear about unintended consequences of the regulation, or treading on the authorities of local government**.** We're aware of some of the issues. Local governments feel "we want to do it. It's the right thing to do, but we don't want to have to do it." Currently, we're addressing issues on a project-by-project basis.

Phil Bobel, SCBWMI and City of Palo Alto—We want to keep an eye on this issue. The more we look into it, for instance, in San Francisquito Creek, we realize it's probably not a pollutant issue, it's physical characteristics of streams when it comes to protecting beneficial uses (e.g., COLD water fish habitat). The WMI is therefore very interested in the stream protection proposals and want to keep an eye on the ball.

Steve Moore response—One idea, in terms of trying to deflect the concerns about property rights,is to describe the stream protection policy in terms of the Water Board implementing these standards only through its regulatory process, so the issue only comes up to the Water Board when somebody wants a permit and then we ask questions such as "is this going to cause a net increase in erosion or deposition." This procedure is laid out in Riley's technical circular, "A Primer on Stream and River Protection for the Regulator and Program Manager," on our website under "Available Documents."

B.C. Capps, Bay Area Open Space Council, San Francisco Bay Joint Venture—I have a couple of questions on stream protection issues. You had mentioned the CEQA scoping meeting from last June for the stream protection and waterbody amendments. Will comments we made at that time be included in this Triennial Review exercise, or should they be re-submitted?

Steve Moore response—Those comments will be part of the Administrative Record for the Stream Protection and Waterbody Amendment. However, they can be resubmitted.

B.C. Capps, Bay Area Open Space Council, Joint Venture—Will the watershed boundaries of the Basin Plan be synchronized with the CalWater watersheds? That seems to make sense to me and I don't see why that wouldn't be done, other than the fact that there are problems with CalWater.

Steve Moore response—Yes. We are going beyond that. In areas where CalWater is inadequate (flat-gradient urban areas of the region), we have made progress in incorporating local mapping information, such as the Oakland Museum watershed maps of the East Bay drainages, and where local jurisdictions have shared data layers (e.g., Santa Clara Valley Water District). We're lucky to have a GIS analyst, Jeff Kapellas, on staff to manage this process.

B.C. Capps, Bay Area Open Space Council, Joint Venture—What input is the Water Board staff interested in getting from stream advocates? We can act as a conduit for input at the local level.

Steve Moore response—We would be interested if you could give us as Water Board staff a sense of how important this is and how important our regulatory process is in protecting creeks. If we were to put something in the Basin Plan, whether its existing regulatory programs or the idea of opening the door a bit in how we evaluate urban runoff programs and how they're protecting their streams; what kind of rules local governments are making to protect their streams and how they're implementing them and how they're doing. We did a regionwide survey and I believe 41% of local governments of the Bay Area have stream protection ordinances. So we would like input on what in our regulatory process do stream advocates support now, what could we be better at, and what kind of accountability mechanisms do you think are reasonable for the State to have on local governments in this arena. There's concern about land use policy and the State overstepping its legal authority and yet the Water Board needs to evaluate physical characteristics to determine if a project will affect water quality.

Kevin Buchan, WSPA—The Basin plan should address the dilution credit for bioaccumulative pollutants and the question of assimilative capacity for bioaccumulatives.

Steve Moore response—Is this a Region 2 specific issue, or have any other WSPA members in California had a similar issue?

Kevin Buchan, WSPA—I'm only familiar with the refineries in this Region.

Steve Moore response—I guess, in your written comments, you'll discuss why the current language in the Basin Plan is unclear?

Kevin Buchan, WSPA—After the SIP got adopted, originally deep water got 10 to 1 dilution and shallow water didn't and then it became if it's a bioaccumulative, you don't get dilution.

Steve Moore response—And the basis for that was the findings of the permit and the fact sheet as opposed to in the Basin Plan.

Kevin Buchan, WSPA —And I know the SIP allows you to grant dilution on a case-by-case basis, watershed-by-watershed basis, permit-by-permit basis, etc. It seemed like there was a decision at the Regional Board level not to grant dilution. I'd like to see this on your list as we move forward with the Basin Plan, because I think it's going to be a problem with other pollutants down the road that with other pollutants that the RMP is seeing. It's truly problematic for dischargers to meet limits that they don't even have control over.

Tom Hall, EOA, Inc. and City of Sunnyvale—On the issue of policy by permit, I would take the next step that it's been developed through litigation and that different permit writers may be more or less familiar with certain State Board rulings and court rulings. The suggestion is to capture those precedential rulings and actions and include them in Chapter 5, Plans and Policies.

Marian Gonzalez, Alameda County Water District—Our NPDES permit requires us to use Stickleback fish, but that is not allowed in the 4th edition of the U.S. EPA acute toxicity manual. What is the procedure for changing that in our permit? Does it go into affect after our permit expires or does the Water Board contact us to make that change prior to when our permit expires.

Steve Moore response—Change in monitoring protocol is required only by permit action. Until the Basin Plan is amended, no permit will change, so there are not imminent changes anticipated with respect to fish used in the acute toxicity assays.

Tom Mumley response—The answer is to comply with the permit requirement. Every permit has a reopener. We can't enforce a basin plan requirement; we can enforce permit requirements. In general, we would deal with this kind of change when the permit is reissued. We could reopen the permit, but that's highly unlikely in your case.

Steve Moore response—It's part of our permit decision making process—monitoring procedures.

Marian Gonzalez, Alameda County Water District—But if those procedures are in the SMP than it might be easier to make those changes than if it's in the actual permit.

Steve Moore response—Yes. Anything in our monitoring program requirements can be changed by Executive Officer signature, but limits and procedures that are outlined in the permit, would require a Board action.

Dave Tucker, City of San Jose—To follow up, the Effluent Toxicity Characterization Program (ETCP) --some things are in here but a lot are not. Procedures that we're supposed to be following. It would be a lot better if everything could be brought together in one place.

Steve Moore response—Some changes have already been drafted as part of the previous amendment process, and can be bundled into a basin plan amendment project when appropriate.

Tom Hall, EOA, Inc. and City of Sunnyvale —On that chronic and acute toxicity issue, one thought to consider would be adopting some type of reasonable potential policy for toxicity testing so that permit writers can have some guidance for when those limits and triggers are required to be in permits. It would be good if the basin plan could be consistent with the Ocean Plan.

Phil Bobel, SCBWMI and City of Palo Alto— On the subject of mixing zones, we've got conservative pollutants and the need to deal with them in the context of other discharges; that could be in one part of the Basin Plan. And then a non-conservative pollutant, cyanide, there might statements associated with the cyanide SSO that alert the permit writer on how to deal with attenuation. To alert you, there are more non-conservative pollutants that may be like cyanide. We're dealing with one now that's a byproduct of disinfection, chlorodibromomethane and we're investigating it and maybe we can adjust our in plant processes to get below the standard, but maybe not. Maybe we can look to what you're going to do on cyanide as the example, or maybe as you're doing it, you can generalize to anticipate other pollutants. The other category that Kevin brought up is bioaccumulative pollutants.

Sarah Young, Santa Clara Valley Water District (SCVWD)—The Water District fully supports the stream protection and management effort. We are thrilled that it is a planning priority of the Water Board, because it is a priority of the District, part of its mission and interests. SCVWD is involved in the WMI. SCVWD encourages the Water Board to consider local knowledge for better understanding of stream functions in specific areas of the region. SCVWD wants to share the knowledge gained and lessons learned in its stewardship, flood planning, and stream maintenance activities.

Steve Moore response—We appreciate it and we recognize the District's partnership with us and with the WMI, especially in this last year with the stream collaborative process. There are economic incentives to enforce this kind of policy regionwide.

Nancy Yoshikawa, U.S. EPA—What are the next steps? There'll be a staff report, will that include a list of issues?

Steve Moore response —Yes. The actual amendment is a table with these types of tasks, probably reorganized, with some tasks bundled together. We'll come up with tasks and an estimate of resources in terms of staff and we will come up with a prioritization that considers the input we've received and considers factors like how long it will take and how efficient it makes the programs for the implementing divisions of the Water Board.

Nancy Yoshikawa, U.S. EPA—So what about the issues that you're going to set aside as more of a State Board issue? Are you planning to write a letter to the State Board?

Steve Moore response —They're involved in the Triennial Review.

Nancy Yoshikawa, U.S. EPA —Will there be a feedback from them as to whether they will follow through?

Steve Moore response —We're bundling the statewide planning priorities from the Basin Plan Roundtable into a proposal to U.S. EPA to help make these things happen. There's a pretty good tracking system for EPA now with the roundtables. Also, we're making Basin Planning more of an official program with workplans, so you'll be able to see in that what the individual regions and the Division of Water Quality will be doing.

Tom Mumley response—You'll find that our Basin Planning process will be much more transparent from here on out, for a variety of reasons, most importantly our own interests. A lot of these questions will be answered in the staff report. For State Board issues, we'll mark those and track those.

Tom Hall, EOA, Inc. and City of Sunnyvale—I have a process suggestion. In its planning, the Water Board should consider opportunities for collaboration, and suggestions for other resources, such as local government or special district funding to achieve planning projects.

Steve Moore response —In our draft staff report, we'll include some ideas for collaboration and leveraging resources.

Tom Hall, EOA, Inc. and City of Sunnyvale --Also, the water recycling language of the Basin Plan is dated and needs updating. The Water Board needs to continue to send the message to local government that recycling is a water resource priority in the Bay Area.

Steve Moore response —That's the kind of thing we can bundle with some other language that's not regulatory, but planning. Strong statements can go a long way at the local level. Great suggestions.

IV. Conclusion

Steve Moore thanked everyone for coming and told participants he looked forward to receiving their written comments. The meeting was adjourned.